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Chapter 7 Trustee

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8 **UNITED STATES BANKRUPTCY COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
10 **SACRAMENTO DIVISION**

11 In re:

Case No.: 15-29890-D-7
Chapter 7

12 **GRAIL SEMICONDUCTOR, a California**
13 **corporation,**

14 Debtor.

16 Sheri L. Carello, in her capacity as Trustee for the
17 Bankruptcy Estate of Grail Semiconductor, a
California corporation,

18 Plaintiff,

19 vs.

20 **DONALD STERN, BILLIONAIRE HOPE**
21 **INTERNATIONAL, LTD., MOM OS, LLC,**
22 **FRANK BAUDER, THE HONGKONG AND**
SHANGHAI BANKING CORPORATION
LTD.,

23 Defendants.

Adversary No. 16-02088

DNL-2

Date: June 15, 2016
Time: 10:00 a.m.
Place: 501 I Street, 6th Floor
Courtroom 34
Sacramento, CA 95814

24 **NOTICE OF HEARING ON**
25 **APPLICATION FOR RIGHT TO ATTACH ORDER AND ORDER FOR ISSUANCE OF**
26 **WRIT OF ATTACHMENT**

27 **TO: ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD.**

28 **PLEASE TAKE NOTICE** that on June 15, 2016, at 10:00 a.m., in Department D of the

1 above-captioned court, located at 501 I Street, 6th Floor, Sacramento, California, SHERI L.
2 CARELLO ("Trustee"), in her capacity as the Chapter 7 trustee for the bankruptcy estate of
3 GRAIL SEMICONDUCTOR, a California corporation ("Debtor"), will and hereby does apply
4 after hearing for a right to attach order and writ of attachment that attaches to DONALD
5 STERN'S ("Stern") and BILLIONAIRE HOPE INTERNATIONAL, LTD.'S ("BHI") account in
6 the amount of \$2.75 million with THE HONGKONG AND SHANGHAI BANKING
7 CORPORATION LTD. ("HSBC").

8 **UNDER CALIFORNIA LAW, ANY OPPOSITION IS DUE NO LATER THAN**
9 **FIVE COURT DAYS BEFORE THE DATE SET FOR THE HEARING (AS DESCRIBED**
10 **BELOW).**

11 **Cal. Code Civ. Proc. Section 484.050 Requirements**

12 The request of the Trustee for an order is based upon the application, declarations filed
13 and served with this notice, the memorandum of points and authorities in support of the
14 application, the exhibits filed in support, and all papers on file in this action, and upon such other
15 matters as may be presented to the Court at the time of the hearing.

16 Your attention is directed to the following sections of the Code of Civil Procedure,
17 Welfare and Institutions Code, and Civil Code that set forth when an attachment may or may not
18 be issued, the manner of calculating the amount to be secured by the attachment, the court's
19 discretion to include costs and attorney's fees, and special limitations on the amount to be
20 secured by attachment in unlawful detainer proceedings: Code Civ. Proc., Sections 482.110,
21 483.010, 483.015, 483.020; Welf. & Inst. Code, Section 15657.01; and Civil Code Section
22 3439.07.

23 **You are notified that**

24 A right to attach order will be issued if the court finds at the hearing that the Trustee's
25 claim is probably valid and the other requirements for issuing the order are established. This
26 hearing may include both written and oral presentations but is not for the purpose of determining
27 whether the claim is actually valid. Determination of the actual validity of the claim will be made
28

1 in subsequent proceedings in the action and will not be affected by the decision at the hearing on
2 the application for the order.

3 If you desire to oppose the issuance of a right to attach order or object to the amount to be
4 secured by the attachment as provided in Code of Civil Procedure section 483.015 (or Code of
5 Civil Procedure section 483.020 in an unlawful detainer action or Civil Code section 3439.07),
6 you must file with this court and serve on plaintiff (no later than **FIVE COURT DAYS** prior to
7 the date set for hearing in item 3) a notice of opposition and supporting declaration or affidavit as
8 required by Code of Civil Procedure section 484.060.

9 If a right to attach order is or has been issued, a writ of attachment will be issued to attach
10 your property described in the Trustee's application unless the court determines that the property
11 is exempt from attachment or that its value clearly exceeds the amount necessary to satisfy the
12 amount to be secured by the attachment. However, since the right to attach order will not
13 necessarily be limited to your property described in the Trustee's application, a writ of
14 attachment may later be issued to attach other nonexempt property of yours.

15 If you claim that all or some portion of the property described in the Trustee's application
16 is exempt from attachment, you must, no later than **FIVE COURT DAYS** prior to this hearing,
17 include your claim of exemption in your notice of opposition filed and served pursuant to Code
18 of Civil Procedure section 484.060 or file and serve a separate claim of exemption with respect
19 to the property as provided in Code of Civil Procedure section 484.070.

20 If you fail to make a claim of exemption with respect to personal property, or make a
21 claim of exemption with respect to real or personal property, but fail to prove that the property is
22 exempt, any further claim of exemption with respect to the property will be barred unless you
23 show a change in circumstances occurring after expiration of the time for claiming exemptions.

24 Claims of exemption resulting from a change of circumstances, whether after denial of a
25 previous claim or expiration of the time for claiming exemptions, may be asserted as provided in
26 Code of Civil Procedure section 482.100.

27 You may obtain a determination at the hearing whether property not described in the
28 application is exempt from attachment. Your failure to claim that property not described in the

1 application is exempt from attachment will not preclude you from making a claim of exemption
2 with respect to the property at a later time.

3 You may also obtain a determination at the hearing whether the amount sought to be
4 secured by the attachment will be reduced by:

5 (1) the amount of any money judgment in your favor and against the Trustee that remains
6 unsatisfied and enforceable;

7 (2) the amount of any indebtedness of the Trustee that you have claimed in a cross-
8 complaint filed in the action if your claim is one upon which an attachment could be issued;

9 (3) the amount of any claim asserted by you as a defense in the answer pursuant to Code
10 of Civil Procedure section 431.70 if the claim is one upon which an attachment could have been
11 issued had an action been brought on the claim when it was not barred by the statute of
12 limitations;

13 (4) the value of any security interest in your property held by the Trustee to secure the
14 indebtedness claimed by the Trustee, together with the amount by which the value of the security
15 interest has decreased due to the act of the Trustee or a prior holder of the security interest.

16 The amount to be secured by an attachment is determined pursuant to the following
17 statutes:

18 (1) Code of Civil Procedure section 482.110. A writ of attachment may include an
19 estimate of the costs and allowable attorney fees.

20 (2) Code of Civil Procedure section 483.010. An attachment may issue on a claim for
21 \$500 or more based on a contract, express or implied, exclusive of attorney fees, costs, and
22 interest. If the claim was originally secured by an interest in real property (e.g., a mortgage or
23 deed of trust), an attachment may issue only if the security has become valueless or has decreased
24 in value to less than the amount owing on the claim, through no fault of the Trustee or the
25 security holder.

26 (3) Code of civil Procedure section 483.015. The amount to be attached includes the
27 amount of the indebtedness claimed by plaintiff, plus estimated costs and allowable attorney fees,
28 reduced by the sum of the following:

1 (a) the amount of any unsatisfied money judgment held by defendant against the
2 plaintiff;

3 (b) the amount of any indebtedness of the Trustee that the defendant has claimed
4 in a cross-complaint filed in the action (if the defendant's claim is one upon which
5 an attachment could be issued);

6 (c) The amount of any claim of the defendant asserted as a defense in the answer
7 pursuant to Section 431.70 if the defendant's claim is one upon which an
8 attachment could be issued had an action been brought on the claim when it was
9 not barred by the statute of limitations; and

10 (d) The value of any security interest in the property of the defendant held by the
11 plaintiff to secure the defendant's indebtedness claimed by the plaintiff, together
12 with the amount by which the value of the security interest has decreased due to
13 the act of the plaintiff or a prior holder of the security interest.

14 (4) Code of Civil Procedure section 483.020. An attachment ordered in an unlawful
15 detainer proceeding may include:

16 (a) the amount of rent past due when the complaint is filed;

17 (b) an additional amount for the estimated rent due from the date the complaint
18 was filed until the estimated date of judgment or delivery of possession to
19 plaintiff; plus

20 (c) estimated costs and attorney fees.

21 Any prepaid rent or lease deposits held by the Trustee are disregarded in the
22 calculation of the amount of attachment. However, the amount of attachment will
23 be reduced by the amounts described in Code of Civil Procedure section 483.015.

24 (5) Civil Code section 3439.07. In an action for relief against a transfer may obtain an
25 attachment or other provisional remedy against the asset transferred or its proceeds in accordance
26 with the procedures described in Title 6.5 (commencing with Section 481.010) of Part 2 of the
27 Code of Civil Procedure.

28 Either you or your attorney or both of you may be present at the hearing.

1 **YOU MAY SEEK THE ADVICE OF AN ATTORNEY ON ANY MATTER**
2 **CONNECTED WITH PLAINTIFF'S APPLICATION. THE ATTORNEY SHOULD BE**
3 **CONSULTED PROMPTLY SO THAT THE ATTORNEY MAY ASSIST YOU BEFORE**
4 **THE TIMES FOR FILING YOUR OPPOSITION AND CLAIMS OF EXEMPTION AND**
5 **AT THE HEARING.**

6 Reference to the Application is suggested for more detail. A copy may be obtained from
7 the Bankruptcy Court whose address appears below.

8 If you choose to file a response you may do so at:

9 UNITED STATES BANKRUPTCY COURT
10 EASTERN DISTRICT OF CALIFORNIA
11 501 I Street, 3rd Floor
12 Sacramento, CA 95814

13 If you mail your response to the Court for filing, you must mail it early enough so the
14 Court will receive it **FIVE COURT DAYS** before the date of the hearing. You must also mail a
15 copy to:

16 The Office of the U.S. Trustee
17 501 I Street, Suite 7-500
18 Sacramento, CA 95814

19 Sheri L. Carello, Chapter 7 Trustee
20 c/o Desmond, Nolan, Livaich & Cunningham
21 1830 15th Street
22 Sacramento, CA 95811

23 If you or your attorney do not take the steps noted above, the Court may decide that you
24 do not oppose the relief sought in the Application.

25 Dated: May 12, 2016

26 **DESMOND, NOLAN, LIVAICH & CUNNINGHAM**

27 By: 

28 **J. RUSSELL CUNNINGHAM**

 Attorneys for Sheri L. Carello, Chapter 7 Trustee